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March 21, 2025

VIA ECF

Maureen W. Gornik
Acting Clerk of Court
Thomas F. Eagleton Courthouse
111 South 10th Street
Room 24.329
St. Louis, MO 63102

Re: *Association for Accessible Medicines v. Keith Ellison*, No. 24-1019

Dear Ms. Gornik:

I write in response to the Attorney General’s letter regarding *Flynt v. Bonta*, 2025 WL 815194 (9th Cir. 2025). *Flynt* confirms that *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), did not overturn precedent holding that state laws that *directly* regulate out-of-state commerce violate the dormant Commerce Clause. *Flynt* therefore provides no support for the Attorney General.

The California law in *Flynt* prohibited giving a license to operate a “cardroom” *in California* to a person owning “more than 1 percent interest in” a gambling institution. 2025 WL 815194, at *2-3. Applying *Ross*, the Ninth Circuit held that this licensing condition did not violate the Commerce Clause’s restriction on extraterritorial state legislation, even though the law had “spillover effects on what plaintiffs may do outside the state,” because the only conduct the law *directly* “regulate[s]”—“the licensing and operation of California cardrooms”—occurs entirely “*within the state.*” *Id.* at *8 (emphasis added).

Importantly, *Flynt* contrasted that regulation of *in-state* conduct with laws that “*directly regulate[]* out-of-state transactions by those with *no* connection to the State.” *Id.* at *4 (quoting *Ross*, 598 U.S. at 376 n.1). The court acknowledged that *Ross* did not overturn the prohibition on state laws that directly regulate out-of-state commerce, and so it declined to revisit circuit precedent applying that prohibition. *Id.* at *4, *9. Rather, it held that the California law is not a direct extraterritorial regulation: “the transaction that [the] California law most directly regulates is the licensing of cardrooms *in the state,*” and the plaintiffs’ operation of cardrooms in California gave them the necessary connection to the state. *Id.* at *8 (emphasis added).

Unlike the law in *Flynt*, Minnesota’s law does not regulate *in-state* transactions, and AAM’s complaint is not that the law has indirect extraterritorial *effects*; rather, the Minnesota law *directly*



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regulates prices charged by *out-of-state* generic manufacturers in *out-of-state* sales. As *Flynt* acknowledged, *Ross* did not displace circuit precedent holding such direct regulation unconstitutional, including *Styczinski v. Arnold*, 46 F.4th 907 (8th Cir. 2022), and the Ninth Circuit cases to the same effect that AAM cited. See Answering Br. 25-29, 35.

Respectfully submitted,

A handwritten signature in blue ink that reads 'William M. Jay'. The signature is fluid and cursive, with a long, sweeping tail on the final letter.

William M. Jay

Enclosure

cc: Counsel of Record (via ECF)